

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11757 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAKESH NATHMAL GARUDIA - Petitioner(s)

Versus

TRIKAMDAS NARANDAS TANNA &1 - Respondent(s)

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Appearance :

MR ZUBIN F BHARDA for Petitioner No(s).: 1.

DS AFF.NOT FILED (R) for Respondent No(s).: 1 - 2.

None for Respondent No(s).: 2.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 13/07/2005

ORAL JUDGMENT

1. By filing instant petition under Article 227 of the Constitution of India, the petitioner seeks to challenge the judgment and order dated 30.3.2000 rendered in Misc. Civil Appeal No.33 of 1998 by the learned 2nd Extra Assistant Judge, Valsad at Navsari by which the appeal filed by

respondent No.1 against respondent Nos.2/1 to 2/3 came to be allowed and thereby the judgment and order dated 20.2.1998 recorded below Ex.1764 in Regular Civil Suit No.66 of 1962 by the learned Civil Judge (S.D.), Valsad at Navsari came to be set aside and receiver was directed to sell the suit property after taking the possession of the same from the occupier (person or company), whoever is in possession of the suit property according to the provisions of the Code of Civil Procedure.

2. Respondent No.1/original plaintiff filed RCS No.66 of 1962 in the Court of learned Civil Judge (S.D.), Valsad at Navsari praying for partition and mesne profit. The aforesaid suit is still pending for adjudication. During the pendency of the suit it was decided by the learned Civil Judge (SD), Valsad at Navsari to sell certain properties belonging to the partners who are parties to the suit and, therefore, a receiver was appointed with regard to property of the partnership firm situated at Plot Nos. C-32 and 33 and C-42 and 43 situated at Udhyognagar Sahkari Sangh Limited, Navsari.
3. Out of the four plots, one plot was still in physical possession of M/s. Garudia Industries. Therefore, receiver took physical possession of three plots and also vide detailed pursis explained the non-taking of possession of the one plot and, therefore, the receiver filed application Ex.1653 praying for direction for selling the aforesaid plot on "as is where is" basis and also for permission to complete all the necessary formalities of public auction and the learned Civil Judge (S.D.) permitted the receiver to fix condition of public auction and also permitted the receiver to sell the suit property by giving public notice on "as and where it is on the site.
4. On the basis of the order passed by the learned Civil Judge (S.D.), public advertisement was issued in local newspaper and the public auction of the plots was fixed on 30.1.1996. Approximately 20 bidders took part in the public auction out of which the petitioner offered to pay Rs.20 lacs for the properties that were to be auctioned and as the price offered by the petitioner was near to the offset price fixed by the receiver, the receiver accepted the petitioner's bid subject to approval being granted by the learned Civil Judge (SD) and directed the petitioner to deposit a sum of Rs. 5 lacs towards earnest money and the remaining amount was to be paid after the approval of the learned Civil Judge (SD) was obtained. The said amount was deposited by the petitioner way back in the year 1996 which is still lying with the Civil Court (SD), Valsad at Navsari.
5. The receiver thereafter filed an application before the learned Civil Judge (SD) to grant approval to the public auction as conducted by him against which respondent No.1 submitted an application vide Ex.1764 praying for cancellation of the public auction that was held by the receiver and also prayed for confiscation of immovable and immovable properties of M/s. Garudia Industries. The main objection that was raised by respondent No.1 was that since the receiver has not taken the physical possession of the plot in possession of M/s. Garudia Industries before the public auction got hold by the receiver, the public auction would get vitiated. The learned Civil Judge (SD), rejected the application Ex.1764 vide order dated 20.2.1998.
6. Aggrieved by the order dated 20.2.1998 passed by the learned Civil Judge (SD), respondent No.1 preferred an appeal being Misc. Civil Appeal No.33 of 1998 in the District Court, Valsad

at Navsari against respondent Nos.2/1 to 2/3. The learned 2nd Extra Assistant Judge, Valsad at Navsari who heard the matter, vide judgment and order dated 30.3.2000 allowed the appeal and set aside the order dated 20.2.1998 recorded below application Ex.1764 passed by the learned Civil Judge (SD) permitting the receiver to sell the property after taking possession from the occupier, which has given rise to the present petition at the instance of the auction purchaser.

7. Mr. Z.F. Bharda, learned advocate for the petitioner, has contended that the petitioner was not made party in the appeal filed before the District Court by respondent No.1 and therefore he is deprived of making his submissions before the District Court. He is the auction purchaser and he has deposited Rs.5 lacs as earnest money in the year 1996 with the Civil Court (SD), Valsad at Navsari. Respondent No.1 was very much aware that the petitioner was an affected party even then he elected not to join the petitioner as party to the appeal and therefore the judgment and order passed by the learned 2nd Extra Assistant Judge, Valsad at Navsari in Misc. Civil Appeal No.33 of 1998 was passed without hearing the petitioner and, therefore, the impugned judgment and order passed by the learned 2nd Extra Assistant Judge, Valsad at Navsari in Civil Misc. Appeal No.33 of 1998 is required to be quashed and set aside as the principle of natural justice has been violated and the judgment and order was passed behind the back of the petitioner and by the said judgment and order, the petitioner is likely to suffer irreparable loss and injuries which cannot be compensated in terms of money. It is further contended by him that the order which is impugned in this petition was passed in the year 2000 behind the back of the petitioner and the petitioner came to know about the said order in the year 2002 and, therefore, he submitted an application in Regular Civil suit No. 66 of 1962 before the learned Civil Judge (SD) praying for staying the hearing of the suit till the petitioner obtains suitable orders. Since the petitioner came to know about the impugned judgment and order passed by the learned 2nd Extra Assistant Judge, Navsari only in the year 2002, he could not approach the District Court by filing Misc. Civil Application for recalling the impugned judgment and order dated 30.3.2000 passed by the learned 2nd Extra Assistant Judge. In these circumstances, the petitioner has elected to invoke the extraordinary jurisdiction of this Court by filing this Special Civil Application. It is also asserted by him that his prayer is limited to the extent that the matter may be remanded to the District Court, Navsari for permitting him to implead as party respondent in Misc. Civil Appeal No.33 of 1998 so that the petitioner can make his submissions before passing any order. He therefore urged that this petition may be allowed and the impugned judgment and order passed by the learned 2nd Extra Assistant Judge, Valsad at Navsari in Misc. Civil Appeal No.33 of 1998 may be quashed and set aside and the matter may be remanded to the learned 2nd Extra Assistant Judge, Valsad at Navsari for deciding the same afresh after permitting the petitioner to implead himself as party respondent and after giving him opportunity of being heard. He, therefore, urged to allow this petition.
8. This Court has heard Mr. Bharda, learned advocate for the petitioner, perused the impugned orders, one which is passed by the learned 2nd Extra Assistant Judge, Valsad at Navsari in Misc. Civil Appeal No.33 of 1998 and also the second order dated 20.2.1998 passed by the learned Civil Judge (SD), Valsad at Navsari below application Ex.1764 in Regular Civil Suit

No.66 of 1962.

9. So far as the factual matrix is concerned, there is no dispute with regard to the prolonged litigation between respondent No.1 and respondent No.2. Respondent No.1 has filed Regular Civil Suit No. 66 of 1962 in the Civil Court (SD), Navsari praying for partition of the suit property and mesne profit against respondent Nos.2/1 to 2/3 which is still pending and during the pendency of the proceedings, receiver was appointed for selling certain properties belonging to the partners who are parties to the suit. Therefore, a receiver was appointed with regard to property of the partnership firm situated at Plot Nos.C-32 and 33 and C-42 and 43 situated at Udhyanagar Sahakari Sangh Limited, Navsari. The learned Civil Judge (SD), Navsari granted permission to the receiver to sell certain properties on the basis of "as and where it is on the site". The receiver appointed by the Court issued public advertisement and thereafter proceeded further for public auction sale. Out of 20 bidders who had taken part in the auction, the petitioner has offered Rs.20 lacs for the properties that were to be auctioned and as the price offered by him was near to the off-set price fixed by the receiver, the receiver accepted the petitioner's bid subject to approval being granted by the learned Civil Judge (SD), Navsari and directed him to deposit a sum of Rs.5 lacs towards earnest money which the petitioner has done and the said amount is still lying with the Civil Court (S.D.), Navsari. Thereafter the receiver filed an application for granting approval to the public auction as conducted by him. Thereupon respondent No.1 submitted an application vide Ex.1764 before the Civil Court (SD), Navsari praying to confiscate the movable and immovable property of M/s. Garudia Industries because the receiver has not taken the physical possession of the plot in possession of M/s. Garudia Industries before the auction got hold by the receiver and hence the auction would be vitiated. The said application was rejected by the learned Civil Judge (SD), Navsari by observing that the order passed below application Ex.1764 vide order dated 20.2.1998 the receiver was permitted to public auction of the properties wherein nowhere it is found that the receiver should take over possession of the said property. Therefore, respondent No.1 filed Misc. Civil Appeal No.33 of 1998 against the order of rejection of application Ex.1764. In fact, respondent No.1 was very much aware that the petitioner was auction purchaser and has purchased the property for Rs.20 lacs and as earnest money he has deposited Rs.5 lacs with the Civil Court (SD) which is still lying with the Civil Court (SD), Navsari. However, respondent No.1 has not chosen to join the petitioner as party respondent before the appellate forum. Therefore, according to this Court, the petitioner is deprived of the hearing and for putting his case before the appellate forum and as a result thereof principle of natural justice is violated. It is equally true that the petitioner was ignorant about the appeal proceedings taken out by respondent No.1 against respondent Nos.2/1 to 2/3 and about the rendering judgment and order therein by the learned 2nd Extra Assistant Judge till he came to know about it in 2002. Therefore he could not file Misc. Civil Application before the District Court for review of the impugned judgment and order passed by the learned 2nd Extra Assistant Judge as it would have been time barred and immediately thereafter he knocked the door of this Court by filing this petition. Therefore, according to this Court, the impugned order passed by the learned 2nd Extra Assistant Judge, Navsari without hearing the petitioner deserves to be quashed and set aside as he is not only necessary but proper party to

adjudicate the issue before the appellate forum. Therefore, the impugned judgment and order passed by the learned 2nd Extra Assistant Judge, Navsari deserves to be quashed and set aside by allowing this petition and by remaining the matter to the District Court, Navsari for deciding the same afresh after permitting the petitioner to implead himself as party respondent in the said appeal and after giving him opportunity of hearing.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. The impugned order dated 30.3.2000 passed by the learned 2nd Extra Assistant Judge, Valsad at Navsari in Misc. Civil Appeal No.33 of 1998 is hereby quashed and set aside and the matter is remanded to the District Court, Navsari with a direction to permit the petitioner to implead himself as party respondent in the said appeal and after impleading himself as party respondent, the appeal be decided afresh after giving him an opportunity of hearing. Rule is made absolute.

Direct service is permitted.

(A.M. Kapadia, J.)

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